

Environmental Quality Board Study of Mandatory Threshold Levels for Environmental Review



LAKESHORE DEVELOPMENT CATEGORY (NEW)

Introduction

At its January 2004 meeting, the Environmental Quality Board (EQB) asked its staff to examine the mandatory category threshold levels in the environmental review rules (Mn Rules parts 4410.4300 and 4410.4400). Board members wanted to know if the thresholds are still appropriately placed to balance environmental protection and public benefit with administrative burden.

Potential Changes: Creating a New Lakeshore Development Category

Based on the issues described above the following actions are being considered:

- (1) Working with the Minnesota Lakes Association and other stakeholders, develop revised or new mandatory EAW and EIS categories specifically taking into account the environmental impacts of modern lakeshore developments;
- (2) As part of developing the categories, consider the issue of who should be the RGU where the lake lies in multiple counties; and
- (3) In the appropriate forum, consider revising the EAW form to better address the environmental impacts of modern lakeshore developments.

Background information

History

During the 2004 legislative session bills were introduced in the House and Senate directing the EQB to develop special Environmental Review categories for lakeshore development. Although the legislation did not pass during the session, Senator Sams and Representative Ozment wrote a letter to the EQB asking the EQB to develop lakeshore categories without waiting for a legislative directive to do so. EQB has also been

contacted by the Minnesota Lakes Association, urging the EQB to adopt lakeshore categories.

Current Thresholds

While there are no existing mandatory categories directed specifically at lakeshore developments, the following mandatory category thresholds may apply to lakeshore projects:

Mandatory Environmental Assessment Worksheet

Residential Development in unincorporated areas (4410.4300, Subp. 19, item A):

- 50 or more unattached or 75 or more attached (in groupings of 4 or more units per building) units if wastewater is treated on-lot (by ISTS), by a series of centralized septic systems, or by a single centralized septic system that is not owned by either the homeowners collectively or by a unit of government;
- 100 or more unattached or 150 or more attached (in groupings of 4 or more units per building) units if wastewater is treated either by a public sewer and wastewater treatment facility or by a single centralized septic tank system owned by the homeowners collectively or by a unit of government.
- RGU = local governmental unit.

Residential Development in incorporated areas (4410.4300, Subp. 19 B–D):

- 100 or more unattached or 150 or more attached (in groupings of 4 or more units per building) units; or 250 or more unattached or 375 or more attached units if the project is consistent with an adopted comprehensive plan that meets the conditions specified in the EQB rules (at 4410.4300, subp. 19, item D). (Note: a certification of the Plan to the EQB may be required).
- RGU = local govt. unit.

Mixed Residential and Commercial Developments (4410.4300, subp. 32):

If a project combines residential units and any commercial components (such as hotel/motels, restaurants, retail space, etc.) the commercial components must be taken into account as well as the residential units, and the effect is that review will be required for fewer residential units as the commercial space increases. The exact method of calculation is prescribed in the rules. RGU = local govt. unit.

Marinas (4410.4300, subpart 25): Construction or expansion of a marina or harbor that results in a 20,000 or more square foot total or increase in water surface area used temporarily or permanently for docks, docking, or maneuvering of watercraft. A “marina” is defined to include an area for the concentrated mooring of 5 or more watercraft with at least one ancillary service such as storage, fueling, launching, repair, sanitary pumpout, or restaurant service. RGU = local govt. unit.

Campgrounds & RV Parks (4410.4300, subpart 20): Construction of, or expansion by, 50 or more sites of a seasonal or permanent recreational development accessible by vehicle. RGU = local govt. unit.

Land Use Conversion (4410.4300, subp. 32): Residential development where the lot size is less than 5 acres, golf courses and other development resulting in the permanent conversion of 80 or more acres of forest, naturally vegetated, native prairie or agricultural land (except for agricultural land in the Twin Cities metropolitan urban service area). (Where some residential lots are under and some over 5 acres, only those under 5 acres are counted toward the 80 acre threshold.)

RGU = local govt. unit.

Forestry; harvesting (4410.4300, subp. 28 B): Clearcutting 80 or more contiguous acres of forest, any part of which is within a shoreland area and within 100 feet of the ordinary high water mark of a lake or river. RGU = DNR.

Protected Waters & Wetlands (4410.4300, subp. 27): Projects impacting 1 or more acres of a DNR-protected water or wetland require an EAW. RGU = local govt unit.

Mandatory Environmental Impact Statement
Residential Development in unincorporated areas (4410.4400, Subp. 14 A):

- 100 or more unattached or 150 or more attached (in groupings of 4 or more units per building) units if wastewater is treated on-lot (by ISTS), by a series of centralized septic systems, or by a single centralized septic system that is not owned by either the homeowners collectively or by a unit of government;
- 400 or more unattached or 600 or more attached (in groupings of 4 or more units per building) units if wastewater is treated either by a public sewer and wastewater treatment facility or by a single centralized septic tank system owned by the homeowners collectively or by a unit of government.
- RGU = local govt. unit.

Residential Development in incorporated areas (4410.4400, Subp. 14 B–D):

400 or more unattached or 600 or more attached (in groupings of 4 or more units per building) units; or 1,000 or more unattached or 1,500 or more attached units if the project is consistent with an adopted comprehensive plan that meets the conditions specified in the EQB rules (at 4410.4300, subp. 19, item D). (Note: a certification of the Plan to the EQB may be required). RGU = local govt. unit.

Mixed Residential and Commercial

Developments (4410.4400, subp. 21): If a project combines residential units and any commercial components (such as hotel/motels, restaurants, retail space, etc.) the commercial components must be taken into account as well as the residential units, and the effect is that review will be required for fewer residential units as the commercial space increases. The exact method of calculation is prescribed in the rules. RGU = local govt. unit.

Marinas (4410.4400, subpart 19):

Construction or a new or expansion of an existing marina, harbor, or mooring project on a state or federally designated wild and scenic river. RGU = local govt. unit.

Protected Waters & Wetlands (4410.4400, subp. 20): Projects that eliminate a DNR-protected water or wetland require an EIS. RGU = local govt unit.

Issues Associated with Lakeshore Development

As undeveloped lakeshore has diminished, shoreland areas once considered less desirable or more difficult to develop are now being proposed for development. These areas are often low-lying and marshy, with shallow water offshore and frequent beds of aquatic vegetation. These same features often make these areas especially important to the ecology of the lake.

Another change being seen is the increase in higher-density residential projects (more units per acre) in shorelands. A type of especial concern appears to be projects where most of the units are not actually on the lakeshore, but have legal access collectively through a few lots on the shore. There is a concern that such developments will result in over use of the lake, and this concern is increased when the lake also has an established public access.

Another concern that has been raised over lakeshore development is the situation where a lake lies in more than one county. In such cases, since only the county in which the development is proposed is assigned as the RGU for the environmental review, residents of the other county have sometimes felt that their concerns were not given sufficient attention by the RGU.

Concerns have also been expressed over whether the existing EAW form adequately covers lake issues and whether county governments are well-enough equipped to deal with the present issues over lakes, but, of course, those concern cannot be addressed through reform of mandatory categories.

Rationale

The EQB staff has noted that over the past several years the number of citizens' petitions on lakeshore projects has increased noticeably and that the types of projects involved are the very types described as of concern by the legislators and the MN Lakes Association.

While development of Minnesota's lakeshores is nothing new, especially for permanent or seasonal residential development, the diminishing amount of undeveloped lakeshore has led to noticeable changes in the types of development projects being proposed and in the nature of the lakeshores under consideration for development. The increasing pressure of these new developments has led to a recognition that the existing mandatory review categories may not be adequate anymore to ensure the needed review of today's lakeshore development projects.

EQB has also been contacted by the Minnesota Lakes Association and concerned legislators urging the EQB to adopt lakeshore categories.